IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7742 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHURAM CINEMA - Petitioner(s)

Versus

PRAVIN PRABHUDAS BRAHMBHATT - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner No(s).: 1.

MR NR SHAHANI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 04/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 23.04.1999 passed by the Labour Court, Ahmedabad in

Reference LCA No. 1982 of 1988, whereby the petitioner was directed to reinstate the respondent to his original post with continuity of service and full back wages.

2.0 The brief facts of the case are that the respondent herein was working with the petitioner as a IVth Grade Operator from 01.01.1979. After completing one year of service with the petitioner, the respondent was terminated by order dated 20.08.1980. Against the said order, the respondent preferred a reference before the Labour Court which came to be allowed and the respondent was granted reinstatement with full back wages.

2.1 Thereafter, since the respondent remained absent from duty during the period from 29.05.1988 to 07.06.1988, the petitioner was constrained to issue Notice dated 07.06.1988. It is the case of the petitioner that when the respondent came to know about the issuance of said Notice, he deliberately approached the Labour Commissioner stating that his services came to be terminated on 05.06.1988. The Labour Court appointed Court Commissioner in the matter. In his report, the Court Commissioner stated that the respondent was permitted to join the duty with the petitioner.

2.2 Thereafter, the Labour Court after hearing the parties, passed the impugned award with the aforesaid directions. Hence, this petition.

3.0 Mr. D R Dave learned advocate for the petitioner has submitted that the Management of the petitioner had even shown its willingness to permit the respondent to resume his duties with the petitioner. However, the respondent had not resumed his duties.

3.1 Mr. Dave has contended that looking to the past conduct of the respondent and considering the fact that the petitioner was making loss, the Labour Court ought not to have granted any back wages to the respondent. He has, therefore, submitted that the impugned award of the Labour Court is illegal and erroneous and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 07.10.1999, this Court had granted ad interim stay of the impugned award of the Labour Court qua payment of back wages alone. Subsequently, vide order

dated 28.12.1999, the ad interim relief was ordered to be continued till the final disposal of the petition, on condition that the petitioner deposits 50 % of the awarded amount in the Registry of this Court. The said amount was to be paid to the respondent on his furnishing security to the satisfaction of the Registrar of this Court.

4.1 Thereafter, vide order dated 10.05.2000 this Court directed the Registry to pay the respondent the sum of Rs.80,000/-, being 50 % of the deposited amount, on his tendering an Undertaking to the aforesaid effect. Pursuant to the above order, the respondent workman received the sum of Rs.80,000/- towards 50 % of the back wages.

4.2 It may be noted that pursuant to the order of this Court dated 07.10.1999, the respondent workman was offered reinstatement in service by the petitioner. However, since it is stated that the respondent had not resumed his duties, I am not considering the award of the Labour Court qua granting reinstatement in service. Even otherwise, the respondent workman can not be granted reinstatement in view of the fact that the petitioner

Cinema is already closed down.

5.0 In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, wherein it has been held that a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case, the respondent herein can not be said to be entitled for back wages.

5.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua granting the respondent back wages is required to be quashed and set aside. Since the respondent workman has already received 50 % of the back wages, no recovery shall be effected. However, it is the respondent shall not be entitled for the balance 50 % of the back wages.

6.0 In above view the matter, the petition is partly

allowed. The impugned award of Labour Court qua granting the respondent reinstatement with continuity of service is untouched in view of the aforesaid development; and, the direction qua granting the balance 50 % of the back wages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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